No. 84-365

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ESTHER GARCIA MANAS PEREZ, as Administratrix of the Estate of Rosa Maria Manas Y Pineiro, Deceased,

Petitioner,

—v.—

THE CHASE MANHATTAN BANK, N.A.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF OF RESPONDENT IN OPPOSITION

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Question Presented

When a foreign government confiscates a deposit made at a foreign branch of a United States bank by a foreign national, which deposit is collectible where the foreign branch is located and operating, is the bank insulated from double liability for such deposit by reason of the act of state doctrine?

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—v.—

THE CHASE MANHATTAN BANK, N.A.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF OF RESPONDENT IN OPPOSITION

This brief is submitted by respondent, The Chase Manhattan Bank, N.A. ("Chase"), in opposition to the petition of Esther Garcia Manas Perez ("petitioner") for a writ of certiorari to the Court of Appeals of the State of New York.

Statement of the Case

This action involves an attempt by a depositor at one of Chase's former branches in Cuba to impose on Chase double liability for her deposits which were confiscated by the Cuban government in 1959. As recognized by the New York Court of Appeals, it presents a classic case for

the application of the act of state doctrine as developed by this Court: a) the debt had its situs in Cuba at the time of confiscation and was thus subject to the jurisdiction of the Cuban government; b) the debt was confiscated by the Cuban government; and c) the confiscation extinguished the debt owed by Chase to its depositor. To have failed to give effect to the act of the Cuban government would have been repugnant to long-established legal precedent and would have resulted in the inequitable imposition of double liability on Chase.

Facts

This action seeks recovery of the principal amount of five deposits which were made by Rosa Maria Manas Y Pineiro ("plaintiff") at the former branch of Chase at Marianao, Cuba, on various dates in 1958 and were evidenced by certificates of deposit.

The certificates evidencing the subject deposits were issued by the Marianao branch on the dates indicated at the top of each certificate: May 26, May 26, June 10, November 7, and December 9, 1958 (R35a-R40a).* Each certificate was issued to plaintiff upon deposit with that branch of currency in the face amount indicated. The obligation represented by each certificate is described in the Spanish language and said to be in "moneda nacional" (R23a-R27a). The certificate matured on the sale indicated thereon: May 26, May 26, June 7, April 7, and June 9, 1959. The certificates were never presented to any of Chase's Cuban branches for payment (R127).

In September, 1959, pursuant to Cuban law (R41a-R51a, R54a-R61a), the Cuban government by its Ministry

* Numbers in parentheses prefixed by the letter "R" refer to the record in the state court. Numbers in parentheses prefixed by the letter "A" refer to the appendix annexed to Perez' petition.

for the Recovery of Misappropriated Funds (the "Ministry") directed Chase's Cuban branches to close certain accounts belonging to former government officials and their families and to remit the balances therein to the Ministry. Chase complied under compulsion of law (R434-R436). Among those accounts were the subject deposits of plaintiff, a Cuban citizen, who was the wife of a cabinet minister in the Batista government. Pursuant to the Ministry's instructions, and after Chase consulted with legal counsel in Cuba (R52a-R53a), plaintiff's accounts at the Marianao branch were closed, and the balances transferred as directed. On September 17, 1960, Chase's Cuban branches were nationalized pursuant to Cuban law (R63a-R71a). All branch assets were taken, and liabilities assumed, by the Cuban government. Thereafter, Chase ceased to have any control of its branches which continued to operate as part of the national bank of Cuba.

In January, 1974, plaintiff first made demand on Chase in New York for payment of the deposits (R82a). By letter dated February 14, 1974, Chase refused payment (R83a). Plaintiff commenced this action in Supreme Court of the State of New York, New York County, on July 14, 1974.

Proceedings and Decisions Below

The action was tried before a jury, and the jury concluded that: (a) the certificates were repayable in U.S. dollars; (b) the certificates could be presented for payment at any branch of Chase anywhere in the world, including in New York and Cuba; and (c) the Cuban government confiscated plaintiff's deposits which had been made in Chase's Marianao branch.

The trial court rendered its decision on December 3, 1980, directing entry of judgment for Chase as a matter of law and based on the jury findings (A41a-A50a). The

trial court held that (a) the subject desposits had their situs in Cuba in 1959, (b) the subject deposits were confiscated by the Cuban government in 1959, and (c) Chase was relieved of liability by reason of the confiscation, the validity of which could not be questioned because of the act of state doctrine.

The Appellate Division of the New York Supreme Court reversed, determining (a) without citation of any authority, that the act of state doctrine applied to intangible property only "where the obligation is found to be situated *exclusively* within the foreign State;" (b) contrary to the jury's finding that the deposits were confiscated, Chase's payment of the deposit balances to the Cuban government was a "voluntary" act; and (c) without citation of any authority, that the act of state doctrine should not be applied to relieve a bank of obligations owed by its branches to depositors (A24a-A40a).

The Court of Appeals of the State of New York reversed, and directed that the trial court's judgment for Chase be reinstated (A1a-A21a). The Court set forth the rule for determining the situs of a debt as follows:

> For purposes of the Act of State doctrine, a debt is located within a foreign State when that State has the power to enforce or collect it. Since *Harris* v. *Balk,* the power to enforce or collect a debt has been dependent on the presence of the debtor. If the debtor is present in the foreign State *and the debt is payable there,* the foreign sovereign then has power to enforce or collect it, and a confiscation of that debt amounts to a seizure of property within that sovereign's borders. (A7a-A8a) (citations and footnote omitted) (emphasis added).

The Court rejected the Appellate Division's conclusion that the situs of plaintiff's deposits was not in Cuba because

the debt was not payable exclusively in Cuba. The Court said:

> The fact that Chase's debt to Manas was not exclusively payable in Cuba, but could in addition have been paid in other countries, does not affect this result. Manas bargained for and received the right to collect the debt from Chase at any of its branches throughout the world. While the debt contemplated alternate place of payment and thus had multiple situs, because it constituted but a single obligation to pay, payment at one of the places chosen for performance extinguished the debt at all of its situses. (A9a)

The Court determined that the property taken by the Cuban government was within its borders for purposes of the act of state doctrine. The Court noted:

> At the time the Cuban government confiscated Manas' deposits in September, 1959, the debtor (Chase) was present in Cuba. Its Cuban branches were open and operating under Cuban authority, and the debt owed by Chase to Manas—as the jury found—was payable at any Chase bank in the world including the Marianao branch where it was confiscated. (A8a)

Accordingly, the Court found that the acts of the Cuban government were beyond its review by reason of the act of state doctrine. The Court noted:

> Only when a debt or other obligation is not payable at all in the confiscating State would the Act of State doctrine be inapplicable. In such situations, the foreign sovereign has no power to enforce or collect the debt. Here, however, as the jury found, Chase's debt to Manas was payable in Cuba, giving Cuba the jurisdiction to collect and enforce it, which

> the Cuban government exercised. By reason of the Act of State doctrine, the legitimacy of the confiscation is beyond our review. (A9a) (citations and footnote omitted).

Given its inability to review the legitimacy of the confiscation, the Court found that Chase's payment of the full amount of its debt to the Cuban government extinguished its debt to plaintiff, concluding:

> Where, as here, Chase paid over the full amount of its debt pursuant to the direction of the Cuban government, a direction which under the Act of State doctrine is beyond our review, Chase is relieved of liability on any subsequent demand by Manas for the funds. (A8a) (citations omitted).

The Court went on to note:

> Manas herself surely could not have redeemed the certificates of deposit in Cuba and subsequently received payment on those same certificates at a Chase branch in another country. Chase's debt to Manas was satisfied by payment to the Cuban government in response to its confiscation of Manas' accounts, and at that point the debt, wherever else it had been payable, was extinguished. (A9a).

The Court found it unnecessary to reach separate questions of New York law (A9a). However, application of New York law, and particularly its choice of law rules, would have resulted in an identical conclusion as New York law is totally consistent with the act of state doctrine.

Petitioner moved for reargument of the New York Court of Appeals' decision, and that motion was denied (A55a).

The Petition for a Writ of Certiorari Should Be Denied Because the New York Court of Appeals Correctly Applied the Act of State Doctrine and There Is No Conflict Between the New York Court of Appeals and Any Federal Court Regarding the Proper Application of the Act of State Doctrine to the Confiscation of a Debt.

Petitioner has failed to put forth a single cogent reason why a writ of certiorari should be issued. The essential issue in the New York Court of Appeals was whether the deposits had situs in Cuba for if such were the case, there was no dispute that the Cuban government acted under color of law in seizing them and terminating Chase's liability. The decision of the New York Court of Appeals herein as it relates to situs and other aspects of the act of state doctrine is consistent with the longstanding decisions of the federal courts and correct in its analysis and application of the doctrine as established and developed by those decisions.

A. Both State and Federal Courts Have Consistently and Uniformly Determined That the Situs of a Debt for Purposes of the Act of State Doctrine Is Within a Foreign State When That State Has the Power to Enforce or Collect the Debt. The Doctrine Was Properly Applied by the Court of Appeals.

In *Underhill* v. *Hernandez*, 168 U.S. 250, 252 (1897), this Court set forth the classic statement of the act of state doctrine:

> Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to

> be availed of by sovereign powers as between themselves.

The act of state doctrine precludes courts in this country from inquiring into the legality or propriety of a foreign sovereign's confiscation of property carried out within that sovereign's borders. *First National City Bank* v. *Banco Nacional de Cuba,* 406 U.S. 759, 763 (1972); *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398, 437 (1964); *Oetjen* v. *Central Leather Co.,* 246 U.S. 297, 303 (1918); *Ricaud* v. *American Metal Co.,* 246 U.S. 304, 309 (1918). It has been applied to the confiscation of intangibles such as bank balances collectible in a foreign state. *Trujillo-M* v. *Bank of Nova Scotia,* 51 Misc. 2d 689, 692 (Sup. Ct. N.Y. Co. 1966), *aff'd,* 29 A.D.2d 847 (1st Dep't), *cert. denied,* 393 U.S. 982 (1968).

The rule enunciated by the New York Court of Appeals with respect to the situs of a debt for purposes of the act of state doctrine (A7a-A8a) was reiterated by the Court of Appeals for the Second Circuit in its almost contemporaneous decision in *Garcia* v. *The Chase Manhattan Bank, N.A.,* 735 F.2d 645, 650 n.5 (2d Cir. 1984). In *Garcia,* the court said:

> For act of state purposes, "a debt is not 'located' within a foreign state unless that state has the power to enforce or collect it."

Id. at 650 n.5 (quoting *Menendez* v. *Saks & Co.,* 485 F.2d 1355, 1364 (2d Cir. 1973), *rev'd on other grounds sub nom. Alfred Dunhill* v. *Republic of Cuba,* 425 U.S. 682 (1976)). *See also Vishipco Line* v. *The Chase Manhattan Bank, N.A.,* 660 F.2d 854, 862 (2d Cir. 1981), *cert. denied,* 459 U.S. 976 (1982); *United Bank, Ltd.* v. *Cosmic International, Inc.,* 542 F.2d 868, 873 (2d Cir. 1976). *Accord Republic of Iraq* v. *First National City Bank,* 353

F.2d 47, 51 (2d Cir 1965), *cert. denied,* 382 U.S. 1027 (1966) (The act of state doctrine is inapplicable to extra-territorial acts of a foreign sovereign). In order for a foreign state to enforce or collect a debt, the foreign state must have jurisdiction over the debtor and the debt must be payable within the foreign state.

Moreover, the decision of the New York Court of Appeals is consistent with its recent decisions governing the act of state doctrine. In *Weston Banking Corporation* v. *Turkiye Garanti Bankasi,* 57 N.Y.2d 315 (1982), and *J. Zeevi & Sons, Ltd.* v. *Grindlays Bank (Uganda) Ltd.,* 37 N.Y.2d 220, *cert. denied,* 423 U.S. 866 (1975), the New York Court of Appeals discussed the application of the act of state doctrine to regulations prohibiting certain payments under either a letter of credit or a promissory note. Neither *Weston* nor *Zeevi* involved, as the present case does, the payment of an obligation, evidenced by such an instrument, to a government, pursuant to government order and in satisfaction of such obligation. But most significant, in both cases the parties had agreed that payment of the obligation would only be made at banks in New York, and, therefore, the Court determined that the debt did not have a situs in the nation issuing the restrictive regulations and was consequently not subject to its acts. For example, in *Weston,* the Court stated:

> We would add that the note requires payment to be made at Chemical Bank in New York City and designates New York law to be controlling.
>
> We conclude that on these facts the Act of State doctrine does not constitute a defense to plaintiff's action to recover on this note. A debt is not located within a foreign State unless it had the power at the instance of an interested party to enforce or collect it.

57 N.Y.2d at 324 (citing *J. Zeevi & Sons, Ltd.* v. *Grindlays Bank (Uganda) Ltd.*, 37 N.Y.2d at 228; *Republic of Iraq* v. *First National City Bank*, 353 F.2d 47, 51 (2d Cir. 1965), *cert. denied*, 382 U.S. 1027 (1966)).

In addition, the Second Circuit and the New York Court of Appeals in this case (A8a-A9a) have recognized that the rule for determining the situs of an intangible for purposes of the act of state doctrine is consistent with the traditional rule announced in *Harris* v. *Balk*, 198 U.S. 215 (1905), that the situs of a debt depends upon jurisdiction over the debtor.* *Garcia* v. *The Chase Manhattan Bank, N.A.*, 735 F.2d 645, 650 n.5 (2d Cir. 1984); *Vishipco Line* v. *The Chase Manhattan Bank, N.A.* 660 F.2d 854, 862 (2d Cir. 1981), *cert. denied*, 459 U.S. 976 (1982); *United Bank Ltd.* v. *Cosmic International, Inc.*, 542 F.2d 868, 873 (2d Cir. 1976).

Petitioner's reliance on *Allied Bank International* v. *Banco Credito Agricola de Cartago*, 733 F.2d 23 (2d Cir. 1984), *rehearing granted* (July 3, 1984), *aff'g*, 566 F. Supp. 1446 (S.D.N.Y. 1983), and *Libra Bank Ltd.* v. *Banco Nacional de Costa Rica, S.A.*, 570 F. Supp. 870 (S.D.N.Y. 1983), as evidence of the confused and inconsistent state of the law is misplaced. The decisions in *Allied* and *Libra* are neither confusing nor inconsistent. In *Allied*, the court concuded that the situs of the debt was not determinative, holding that the acts of the Costa Rican government should be given effect because of principles of comity and regardless of the situs of the debt. 733 F.2d at 26. In *Libra*, the district court was dealing with promissory notes payable exclusively at a bank in New York and

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* The New York Court of Appeals recognized that, although another aspect of *Harris* v. *Balk* has been overruled by *Schaffer* v. *Heitner*, 433 U.S. 186 (1977), the debt-situs holding in *Harris* remains unimpaired (A7a).

was thus constrained to find their situs solely in New York. 470 F. Supp. at 881, 882.

As noted above, the test for determining the situs of a debt for purposes of the act of state doctrine, established by a long line of precedent, is both clear and unchallenged. The situs of a debt is within a foreign state when that state has the power to enforce or collect the debt. A foreign state has the power to enforce or collect the debt when both the debtor is present within the foreign state and the debt is payable there. The facts herein meet all criteria for the application of the act of state doctrine to the confiscation of the subject debt. There is no confusion with respect to the relevant principles or their application by the New York Court of Appeals in the present case. There is no reason for this Court to take time to consider the matter further.

B. The Decision of the New York Court of Appeals Is Consistent With the *Garcia* Decision.

Contrary to petitioner's contention (Petition at 10), the decision of the New York Court of Appeals is entirely consistent with the almost contemporaneous decision of the Second Circuit in *Garcia* v. *The Chase Manhattan Bank, N.A.*, 735 F.2d 645 (2d Cir. 1984). Petitioner's allegation that *Garcia* is "factually indistinguishable" from *Perez* is simply erroneous.

The Second Circuit's amended opinion in *Garcia* is factually distinguishable from *Perez* in one fundamental respect.* The Second Circuit determined in *Garcia* that

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* The original opinion of the Second Circuit in *Garcia* ignored the previous decisions regarding the situs of a debt for purposes of the act of state doctrine. Chase moved for reargument, with suggestion for rehearing *en banc*, and referred the Court to the New York Court

(footnote continued on following page)

Chase had agreed to insure plaintiff's deposits against all political and legal risks which the future might hold, including confiscation by the Cuban government. The Second Circuit found:

> The purpose of the agreement between Chase and Dominguez and Garcia was to ensure that, no matter what happened in Cuba, including seizure of the debt, Chase would still have a contractual obligation to pay the depositors upon presentation of their CDs.

Id. at 650 (footnote omitted).

In the present case, however, no such contractual undertaking on the part of Chase existed. Indeed, petitioner argued before the New York Court of Appeals that such an extraordinary agreement should be found, and the Court rejected that argument.

In *Garcia,* the Second Circuit conceded that "if the situs of Chase's debt to Garcia were in Cuba, the Cuban government could validly seize it," *Id.* (footnote omitted), but concluded that the act of state doctrine was not applicable because of the unique contractual undertaking between Chase and Garcia to insure Garcia against all political and legal risks. The Court noted:

> Today's decision is predicated on Chase's contractual undertaking to ensure the safety of . . . Garcia's money by agreeing to honor its obligations

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(footnote continued from preceding page)

of Appeals' decision in *Perez,* believing that the two cases were factually indistinguishable. The Second Circuit disagreed with Chase's interpretation of the facts in *Garcia* and its amended opinion vividly illustrates the factual differences between the two cases. Based on the amended opinion, Chase's motion for reargument, with suggestion for rehearing *en banc,* was denied, and Chase did not seek a writ of certiorari.

> in dollars at any of its branches. . . . Chase cannot use the act of state doctrine as a defense because the doctrine is not implicated.

Id. at 651. Once the Second Circuit had determined that the unique contractual undertaking between Chase and Garcia existed, the act of state doctrine was no longer involved, and the situs of the debt became irrelevant.

Indeed, the New York Court of Appeals could have cited *Garcia* as authority for its holding that under the act of state doctrine, the situs of Chase's debt to petitioner was in Cuba and the Cuban government could validly seize it. The Second Circuit stated:

> If the foreign state can enforce or collect the debt, the act of state doctrine will apply to seizure of the debt because the doctrine seeks to avoid challenging the completed acts of foreign governments.

Id. at 650 n.5.

Rather than a tenuous distinction, as suggested by petitioner, the distinction between *Perez* and *Garcia* is fundamental. Absent an agreement to insure against political and legal risks, the act of state doctrine is not only implicated, but plays a determinative role. Accordingly, the differing results in *Perez* and *Garcia* can be readily explained by the radical difference between the contractual undertakings found to have existed between the respective plaintiffs and Chase.

Conclusion

Petitioner is unable to demonstrate any inconsistency between the decision of the New York Court of Appeals herein and any decision of a federal court. Moreover, the rule adopted by the New York court for determining the situs of a debt for purposes of the act of state doctrine follows a long line of precedent and raises no new important federal question. As a result, review by this Court is unnecessary, and the petition for a writ of certiorari to the Court of Appeals of the State of New York should be denied.

Dated: October 4, 1984

Respectfully submitted,

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APPENDIX A

Rule 28 Listing of Parents, Subsidiaries and Affiliates

The Chase Manhattan Bank, N.A., is 100% owned by The Chase Manhattan Corporation. A comprehensive list of subsidiaries and affiliates, including wholly-owned entities, is maintained by The Chase Manhattan Corporation and is considered confidential. If the Court believes it necessary, The Chase Manhattan Bank, N.A., will supply such a list but would request that the list be kept confidential. The following is a list of the subsidiaries and affiliates of The Chase Manhattan Corporation as listed in its most recent annual report:

Domestic Locations

Chase Bank International
Chase Commercial Corporation
Chase Econometric/Interactive Data Corporation
Chase Home Mortgage Corporation
Chase Investors Management Corporation
Chase Manhattan Bank, N.A., The
Chase Manhattan Bank (U.S.A.), N.A., The
Chase Manhattan Capital Markets Corporation
Chase Manhattan Financial Services, Inc.
Chase Manhattan Government Securities, Inc.
Chase Manhattan of California Trust
Chase Manhattan of Utah
Chase Manhattan Industrial Bank
Chase Manhattan Overseas Banking Corporation
Chase Manhattan Service Corporation
Chase Manhattan Treasury Corporation
Chase National Corporate Services, Inc.
Chase T/C Service Corporation
Computer Power, Inc.

Chase Trans-Info, Inc.
Rose & Company Investment Brokers, Inc.

Overseas Locations

Europe

Subsidiary and Associate Banks

Banque de Commerce, S.A.
Banque de Reescompte et de Placement (B.A.R.E.P.)
Chase Bank, A.G.
Chase Bank (Ireland) Ltd.
Chase Bank and Trust Co. (C.I.), Ltd.
Chase Manhattan Bank (Austria) A.G.
Chase Manhattan Bank Luxembourg, S.A.
Chase Manhattan Bank, OY
Chase Manhattan Bank (Switzerland)
Chase Manhattan Limited
Chase Manhattan, S.A.
Libra Bank Limited
Nederlandse Credietbank N.V.

Subsidiary and Associate Companies

Chase Trade Finance, Ltd.
Chasefin-Chase Finanziaria, S.p.A.
Financiere d Investissements et de Construction Immobiliere (F.I.C.I.)
Interactive Data GmbH

Middle East and Africa

Subsidiary and Associate Banks

Chase Bank Cameroon, S.A.
Chase Merchant Bank Nigeria Limited
Chase National Bank (Egypt) S.A.E., The
Saudi Investment Banking Corporation

Asia and Australia

Subsidiary and Associate Banks

Amanah Chase Merchant Bank Berhad
Chase Manhattan Asia Limited
Chase Manhattan Trust Company (Hong Kong) Ltd.

Subsidiary and Associate Companies

Alliance Acceptance Co. Limited
Alliance Holdings Limited
Chase-N.B.A. Group Ltd.
Chase-N.B.A. Securities, Ltd.
Diamond Lease Company Ltd.
P.T. Chase Leasing Indonesia

Western Hemisphere

Subsidiary and Associate Banks

Banco Atlantida, S.A.
Banco de Investimentos Lar Brasileiro, S.A.
Banco del Comercio
Banco del Comercio (Panama), S.A.
Banco Lar Brasileiro, S.A.
The Chase Manhattan Bank of Canada
Chase Manhattan Trust Cayman Ltd.
The Chase Manhattan Trust Corporation Limited

Subsidiary and Associate Companies

Arrendadora Cremi, S.A.
Chase Manhattan Leasing Canada, Ltd.
Financeira Lar Brasileiro, S.A.
Inversiones Atlantida, S.A.